

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-6443**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BERNICE PEARSON,

Defendant - Appellant.

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Appeal from the United States District Court for the Northern  
District of West Virginia, at Wheeling. Frederick P. Stamp, Jr.,  
District Judge. (CR-02-19; CA-03-117-5)

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Submitted: November 22, 2005

Decided: December 2, 2005

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Before MOTZ, TRAXLER, and GREGORY, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Bernice Pearson, Appellant Pro Se. Robert H. McWilliams, Jr.,  
Assistant United States Attorney, Wheeling, West Virginia, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Bernice Pearson seeks to appeal the district court's order accepting the recommendation of the magistrate judge dismissing as untimely her 28 U.S.C. § 2255 (2000) motion, and concluding that United States v. Booker, 125 S. Ct. 738 (2005) is not retroactively applicable in § 2255 proceedings. This order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of her constitutional claims is debatable and that any dispositive procedural findings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Pearson has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED